

**ANNUAL REPORT
OF THE
CHILD CUSTODY AND SUPPORT
ADVISORY COMMITTEE**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2009

INDIANA LEGISLATIVE COUNCIL

2009

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INDIANA CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

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Staff

Eliza Houston Stephenson
Attorney for the Committee

Bill Brumbach
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY DIRECTIVE

The Indiana General Assembly enacted legislation (IC 33-24-11-6) directing the Committee to review custody and educational expenses and other items related to the welfare of a child of a family that is no longer intact. Specifically, the Committee is to consider the following in studying the child support guidelines:

- (1) The mathematics pertaining to the child support guideline chart.
- (2) The actual costs of supporting a child.
- (3) Whether it is appropriate to calculate child support guideline amounts based primarily upon the ability of the parent to pay rather than the financial needs of the child.
- (4) Equality of child support awards for the children of the parties, regardless of birth order.
- (5) A mechanism that may be employed to modify the amount of support to be paid due to a change in financial circumstances or a change in the number of children being supported by either parent.
- (6) The age of a child to the extent that the child may require different amounts of support at different ages.
- (7) Clarification regarding under what circumstances, if any, support may be abated.
- (8) A mechanism that may be employed to ensure that the guidelines are applied flexibly.
- (9) The application of the guidelines to a split custody situation.
- (10) Whether it is appropriate to base child support guidelines upon the premise that the child should enjoy the same standard of living that the child would have enjoyed if the family remained intact.

II. SUMMARY OF WORK PROGRAM

The Committee met four times during the 2009 interim, on September 25, October 2, October 16, and October 30. All meetings were held at the State House in Indianapolis.

III. SUMMARY OF TESTIMONY

For a more detailed account, minutes for the Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

The first reference to a witness includes the name of the witness and the person or organization the witness represents. For brevity, any subsequent reference includes only the name of the witness. A witness list is included at the end of the report.

September 25, 2009 meeting

Relocation notification provisions

Mr. Gregory DeVries, a Committee member, presented problems that he encountered in trying to abide by the laws regarding relocation notification requirements and questioned whether the ninety day notice requirements worked with the circumstances surrounding the buying and selling of houses. Mr. Donald Beatty testified that the relocation law is too broad and that there is a gap in the relocation law in a situation where a parent has already located with a child. The Committee members received a copy of an email handout from Ms. Connie Spence discussing her concerns with the relocation provisions.

Other business

Mr. Stuart Showalter, Indiana Custodial Rights Advocates, stated that he was available for consultation with the legislators on child and custodial issues. Mr. Robert Monday from the Children's Rights Council testified that the best interests of the child standard is not applied in assigning sole custody to the mother upon the execution of a paternity affidavit and that the state laws regarding paternity affidavits should be gender neutral. Representative Vanessa Summers, a Committee member, stated that she would like the Committee to study the following issues: (1) Alternative means to make fathers pay delinquent child support other than jail time. (2) Requiring divorced parents to attend ongoing workshops or establishing other requirements to encourage parents to remain friendly for the best interests of their child.

October 2, 2009 meeting

Amendments to the Indiana Child Support Rules and Guidelines

Mr. Jeff Bercovitz, Director, Juvenile and Family Law, Indiana Judicial Center, explained the amendments to the Indiana Child Support Rules and Guidelines that will take effect on January 1, 2010. Ms. Cynthia Longest, Deputy Director of the Child Support Bureau, Department of Child Services (Department), explained the new health insurance premium worksheet, which is one of the changes to the Indiana Child Support Rules and Guidelines. Mr. Gregory DeVries expressed concern with the new health insurance premium worksheet regarding the amount of work and research that a parent may have to do to find out where the parent could get health insurance at the lowest cost. Mr. Stuart Showalter testified that it makes no sense to charge a parent to pay child support when the parent qualifies for a court appointed attorney and is incarcerated. He discussed programs established in other states that help parents find jobs and other means to pay child support. Mr. Donald Beatty discussed a program that would create a credit for parents who participate in the program as an alternative to incarcerating the parents for failing to pay child support.

Execution of paternity affidavits

_____Mr. Chris Worden provided Committee members with an article he wrote entitled "Rethinking the Paternity Affidavit" and asked to speak on paternity affidavits at the October 16, 2009 Committee meeting. _____

October 16, 2009 meeting

Execution of paternity affidavits; custody issues

_____Mr. Chris Worden provided information on federal and state laws regarding paternity affidavits and expressed recommendations for changes to the state law regarding paternity affidavits, including giving an executed paternity affidavit the effect of a court order and amending the paternity affidavit to:

- (1) require the mother to state with certainty that the man is the biological father of the child;
- (2) contain a written statement of the criminal repercussions for knowingly or intentionally falsely naming a man as the child's biological father;
- (3) clearly explain the father's rights and responsibilities; and
- (4) provide information as to how a mother or father can enforce the rights established by the execution of a paternity affidavit.

Senator Brent Steele, Chairperson, discussed amending the paternity affidavit statute to provide that a genetic test that shows that the man is not the father of a child establishes that a material mistake of fact existed in the execution of the paternity affidavit. Mr. Bruce Pennamped, a Committee member, expressed concern with giving a paternity affidavit the effect of a court order because there would be no determination of the best interests of the child.

Grandparent and great-grandparent visitation

Ms. Carolyn Meadows and Mr. Jerry Meadows testified that they are grandparents and great-grandparents and asked the Committee to approve legislation that would allow them to seek visitation with their great-grandchildren. The Committee discussed Preliminary Draft 3125 concerning changes to the grandparent visitation statutes and issues surrounding amending the grandparent visitation statutes.

Other business

Mr. Donald Beatty testified that as a result of the case *D.B. v. M.B.V.*, 913 N.E. 2d 1271 (Ind. Ct. App. 2009), and other court decisions, the language in IC 31-17-4-2 should be changed from "might" to "would." Committee members received a copy of a request for an amendment to the grandparent visitation statute from Ms. Judy Brockriede and a letter expressing concerns regarding the Indiana Parenting Time Guidelines from Ms. Jatina Altmann.

October 30, 2009 meeting

Child support legislative gap analysis

Ms. Cynthia Longest provided the following testimony:

(1) The Department undertook a project to compare Indiana child support statutes with federal child support requirements because Indiana is not doing as well as other states in certain performance categories.

(2) The project involved comparing Indiana child support statutes with the federal child support requirements to determine in what areas the Indiana statutes could be clearer or were not in compliance with federal statutes.

(3) The Department identified income withholding, license suspension, medical support, and other provisions as areas to address in 2010 legislation.

Consideration of drafts of proposed legislation

The Committee discussed Preliminary Draft 3213 concerning grandparent and great-grandparent visitation and Preliminary Draft 3275 concerning rescission of a paternity affidavit.

Mr. Corey Ealy, Indiana Department of Health, read a copy of a paternity affidavit that is provided to a man in a hospital after the birth of a child. Mr. John Chavis testified that he would like to see some kind of DNA testing.

Other business

Mr. Michael Red testified concerning the aspects of the law that he felt made it too easy for a custodial parent to oppose a noncustodial parent's parenting time. He suggested that IC 31-14-14-1 and IC 31-17-4-1 be amended to provide that a court may not restrict a parent from exercising parenting time unless there is clear and convincing evidence that parenting time would endanger the child's physical health or significantly impair the child's emotional development.

Mr. Daniel Frick testified that custodial parents have a prosecutor working to obtain child support for the custodial parent but there is no one working for the noncustodial parent unless the noncustodial parent hires a private attorney. Mr Frick also discussed needed changes regarding serving of papers for court dates. Ms. Sharon Huehls testified about her son's experience in trying to get joint custody of his children and stated that the default under the law should be for joint custody.

Mr. Robert Monday asked the Committee to make a recommendation to change the language in IC 16-37-2-2.1 to provide that the mother and father have joint legal custody of a child when a paternity affidavit is executed under IC 16-37-2-2.1.

IV. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee did not make any findings of fact.

The Committee approved, in an 8-2 roll call vote, Preliminary Draft 3213, which would amend the grandparent visitation statutes as follows:

- (1) Allows great-grandparents to seek visitation rights with their great-grandchildren under the same circumstances that grandparents may seek visitation with their grandchildren.
- (2) Allows a grandparent or great-grandparent to seek visitation if the grandparent or great-grandparent has had meaningful contact with the child but, as a result of an estrangement between the parent of the child and the grandparent or great-grandparent, the parent of the child terminated the child's visits with the grandparent or great-grandparent.
- (3) Establishes factors for the court to consider in determining whether granting a grandparent or great-grandparent visitation rights is in the best interests of the child.

The Committee, in a 10-0 roll call vote, approved Preliminary Draft 3275, which would amend a paternity affidavit statute to provide that evidence that a man is excluded as the biological father of a child based on a genetic test that indicates that the man is not the child's biological father constitutes a material mistake of fact that existed in the execution of the paternity affidavit.

The Committee recommended, in a 10-0 roll call vote, that a clear and convincing standard should be added in IC 31-14-14-1 and IC 31-17-4-1.

The Committee recommended, in a 9-0 roll call vote, that the language in IC 16-37-2-2.1 that provides that a mother has sole legal custody should be removed and be replaced with language that would provide that, unless another custody determination is made by a court in a proceeding under IC 31-14, the mother of the child has primary physical custody subject to the father having reasonable parenting time in accordance with the Indiana Parenting Time Guidelines.

After a motion was made and seconded, the final report of the Committee with the inclusion of the testimony and the action of the October 30 meeting was approved by a 9-0 roll call vote.

WITNESS LIST

Mr. Gregory DeVries, Committee member

Mr. Stuart Showalter, Indiana Custodial Rights Advocates

Mr. Donald Beatty

Mr. Robert Monday, Children's Rights Council

Mr. Jeff Bercovitz, Indiana Judicial Center

Ms. Cynthia Longest, Deputy Director of the Child Support Bureau

Mr. Chris Worden

Ms. Carolyn Meadows

Mr. Jerry Meadows

Mr. Corey Ealy, Indiana State Department of Health

Mr. John Chavis

Mr. Michael Red

Mr. Daniel Frick

Ms. Sharon Huehls